

## **APPENDICES**

### **CONTENTS**

- A (RESERVED)
- B1 FEDERAL GENERAL CONFORMITY REGULATION (DETERMINING CONFORMITY OF  
GENERAL FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS)
- B2 TRANSPORTATION CONFORMITY (CONFORMITY TO STATE OR FEDERAL  
IMPLEMENTATION PLANS OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS  
DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT  
ACT)
- C AIR TOXICS "HOT SPOTS" FEE SCHEDULE FOR RULE 610
- D MANUAL OF PROCEDURES - BIOMASS EMISSION REDUCTION CREDIT AND BANKING  
PROCEDURE MANUAL FOR RULE 506

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## **APPENDIX B**

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## FEDERAL GENERAL CONFORMITY REGULATION

The Code of Federal Regulations, title 40, chapter I, subchapter C, parts 6 and 51 are amended and part 93 is added as follows:

### PART 6--[AMENDED]

1. The authority citation for part 51 continues to read as follows:  
Authority: 42 U.S.C. 7401-7671q.
2. Section 6.303 is amended by reserving paragraphs (c) through (g) and revising paragraphs (a) and (b) to read as follows:
  - (a) The Clean Air Act, as amended in 1990, 42 U.S.C. 7476(c), requires Federal actions to conform to any State implementation plan approved or promulgated under section 110 of the Act. For EPA actions, the applicable conformity requirements specified in 40 CFR part 51, subpart W, 40 CFR part 93, subpart B, and the applicable State implementation plan must be met.
  - (b) In addition, with regard to wastewater treatment works subject to review under Subpart E of this part, the responsible official shall consider the air pollution control requirements specified in section 316(b) of the Clean Air Act, 42 U.S.C. 7616, and Agency implementation procedures.

### PART 51--[AMENDED]

1. The authority citation for part 51 continues to read as follows:  
Authority: 42 U.S.C. 7401-7671q.
2. Part 51 is amended by adding a new subpart W to read as follows:

## W -- DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

### Sec.

- 51.850 Prohibition.**
- 51.851 State implementation plan (SIP) revision.**
- 51.852 Definitions.**
- 51.853 Applicability.**
- 51.854 Conformity analysis.**
- 51.855 Reporting requirements.**
- 51.856 Public participation.**
- 51.857 Frequency of conformity determinations.**
- 51.858 Criteria for determining conformity of general Federal actions.**
- 51.859 Procedures for conformity determinations of general Federal actions.**
- 51.860 Mitigation of air quality impacts.**

## W -- DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

### ' 51.850      Prohibition.

- (a) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.
- (b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action is taken.
- (c) The preceding sentence does not include Federal actions where either:
  - (1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to the effective date of this rule, or
  - (2)
    - (i) Prior to the effective date of this rule, an EA was commenced or a contract was awarded to develop the specific environmental analysis,
    - (ii) Sufficient environmental analysis is completed by March 15, 1994 so that the Federal

- agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under section 176(c) of the Clean Air Act (Act), and
- (iii) A written determination of conformity under section 176(c) of the Act has been made by the Federal agency responsible for the Federal action by March 15, 1994.
  - (d) Notwithstanding any provision of this subpart, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the Act.

**' 51.851 State implementation plan (SIP) revision.**

- (a) Each State must submit to the Environmental Protection Agency (EPA) a revision to its applicable implementation plan which contains criteria and procedures for assessing the conformity of Federal actions to the applicable implementation plan, consistent with this subpart. The State must submit the conformity provisions within 12 months after November 31, 1993, or within 12 months of an area's designation to nonattainment, whichever date is later.
- (b) The Federal conformity rules under this subpart and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. A State's conformity provisions must contain criteria and procedures that are no less stringent than the requirements described in this subpart. A State may establish more stringent conformity criteria and procedures only if they apply equally to non-Federal as well as Federal entities. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable SIP, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the State revises its SIP to specifically remove them from the SIP and that revision is approved by EPA.

**' 51.852 Definitions.**

Terms used but not defined in this part shall have the meaning given them by the Act and EPA's regulations, in that order of priority.

Affected Federal land manager means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under 42 U.S.C. 7472 of the Act that is located within 100 km of the proposed Federal action.

Applicable implementation plan or applicable SIP means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110 of the Act, or promulgated under section 110(c) of the Act (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the Act and which implements the relevant requirements of the Act.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

Cause or contribute to a new violation means a Federal action that:

- (1) Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken, or
- (2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the Federal action.

Criteria pollutant or standard means any pollutant for which there is established a NAAQS at 40 CFR part 50.

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated

by the Federal action and occur at the same time and place as the action.

Emergency means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

Emissions budgets are those portions of the applicable SIP's projected emissions inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

Emission offsets, for purposes of section 51.858, are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

EPA means the United States Environmental Protection Agency.

Federal action means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase of the non-Federal undertaking that requires the Federal permit, license, or approval.

Federal agency means, for purposes of this rule, a Federal department, agency, or instrumentality of the Federal government.

Increase the frequency or severity of any existing violation of any standard in any area means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Indirect emissions means those emissions of a criteria pollutant or its precursors that:

- (1) Are caused by the Federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable, and
- (2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

Maintenance area means an area with a maintenance plan approved under section 175A of the Act.

Maintenance plan means a revision to the applicable SIP, meeting the requirements of section 175A of the Act.

Metropolitan Planning Organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

Milestone has the meaning given in sections 182(g)(1) and 189(c)(1) of the Act.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM-10), and sulfur dioxide (SO<sub>2</sub>).

NEPA is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Nonattainment Area (NAA) means an area designated as nonattainment under section 107 of the Act and described in 40 CFR part 81.

Precursors of a criteria pollutant are:

- (1) For ozone, nitrogen oxides (NO<sub>x</sub>), unless an area is exempted from NO<sub>x</sub> requirements under section 182(f) of the Act, and volatile organic compounds (VOC) and
- (2) For PM-10, those pollutants described in the PM-10 nonattainment area applicable SIP as significant contributors to the PM-10 levels.

Reasonably foreseeable emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Regionally significant action means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

Regional water and/or wastewater projects include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

Total of direct and indirect emissions means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under section 51.853, paragraph (c), (d), (e), or (f) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

#### **'51.853 Applicability.**

- (a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in this subpart.
- (b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.



- (1) For purposes of paragraph (b) of this section, the following rates apply in **nonattainment areas (NAAs)**:

	<u>Tons/Year</u>
<b>Ozone (VOC's or NOx)</b>	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Marginal and moderate NAA's inside an ozone transport region	
VOC	50
NOx	100
<b>Carbon monoxide</b>	
All NAA's	100
<b>SO<sub>2</sub> or NO<sub>2</sub></b>	
All NAA's	100
<b>PM-10</b>	
Moderate NAA's	100
Serious NAA's	70
<b>Pb</b>	
All NAA's	25

- (2) For purposes of paragraph (b) of this section, the following rates apply in **maintenance areas**:

	<u>Tons/Year</u>
<b>Ozone (NOx), SO<sub>2</sub> or NO<sub>2</sub></b>	
All Maintenance Areas	100
<b>Ozone (VOC's)</b>	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
<b>Carbon monoxide</b>	
All maintenance areas	100
<b>PM-10</b>	
All maintenance areas	100
<b>Pb</b>	
All maintenance areas	25

- (c) The requirements of this subpart shall not apply to:

- (1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.
- (2) The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:
  - (i) Judicial and legislative proceedings.
  - (ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.
  - (iii) Rulemaking and policy development and issuance.
  - (iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.
  - (v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.
  - (vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and

- fees.
- (vii) The routine, recurring transportation of materiel and personnel.
  - (viii) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.
  - (ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.
  - (x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.
  - (xi) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.
  - (xii) Planning, studies, and provision of technical assistance.
  - (xiii) Routine operation of facilities, mobile assets and equipment.
  - (xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.
  - (xv) The designation of empowerment zones, enterprise communities, or viticultural areas.
  - (xvi) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.
  - (xvii) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy.
  - (xviii) Actions that implement a foreign affairs function of the United States.
  - (xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.
  - (xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.
  - (xxi) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.
- (3) Actions where the emissions are not reasonably foreseeable, such as the following:
    - (i) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.
    - (ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.
  - (4) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.
- (d) Notwithstanding the other requirements of this subpart, a conformity determination is **not** required for the following Federal actions (or portion thereof):
- (1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the Act) or the prevention of

- significant deterioration (PSD) program (title I, part C of the Act).
- (2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section;
  - (3) Research, investigations, studies, demonstrations, or training [other than those exempted under section 51.853(c)(2)], where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;
  - (4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).
  - (5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.
- (e) Federal actions which are part of a continuing response to an emergency or disaster under section 51.853(d)(2) and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under section 51.853(d)(2) are exempt from the requirements of this subpart only if:
- (1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or
  - (2) For actions which are to be taken after those actions covered by paragraph (e)(1) of this section, the Federal agency makes a new determination as provided in paragraph (e)(1) of this section.
- (f) Notwithstanding other requirements of this subpart, actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(1) or (g)(2) and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.
- (g) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(1) or (g)(2) of this section:
- (1) The Federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:
    - (i) Cause or contribute to any new violation of any standard in any area;
    - (ii) Interfere with provisions in the applicable SIP for maintenance of any standard;
    - (iii) Increase the frequency or severity of any existing violation of any standard in any area; or
    - (iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:
      - (A) A demonstration of reasonable further progress;
      - (B) A demonstration of attainment; or
      - (C) A maintenance plan; or
  - (2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.
- (h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:
- (1) The Federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the basis for the presumptions;
  - (2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

- (3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and
- (4) The Federal agency must publish the final list of such activities in the Federal Register.
- (i) Notwithstanding the other requirements of this subpart, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of section 51.850 and sections 51.855-860 shall apply for the Federal action.
- (j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be presumed to conform and the requirements of section 51.850 and sections 51.855-860 shall apply for the Federal action.
- (k) The provisions of this subpart shall apply in all nonattainment and maintenance areas.

**' 51.854 Conformity analysis.**

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

**' 51.855 Reporting requirements.**

- (a) A Federal agency making a conformity determination under section 51.858 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Act and the MPO a 30 day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.
- (b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under section 51.858.

**' 51.856 Public participation.**

- (a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under section 51.858 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.
- (b) A Federal agency must make public its draft conformity determination under section 51.858 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.
- (c) A Federal agency must document its response to all the comments received on its draft conformity determination under section 51.858 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.
- (d) A Federal agency must make public its final conformity determination under section 51.858 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

**' 51.857 Frequency of conformity determinations.**

- (a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under section 51.855, unless the Federal action has been completed or a

- continuous program has been commenced to implement that Federal action within a reasonable time.
- (b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under section 51.855.
- (c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in section 51.853(b), a new conformity determination is required.

**' 51.858 Criteria for determining conformity of general Federal actions.**

- (a) An action required under section 51.853 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in section 51.853, paragraph (b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:
  - (1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;
  - (2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;
  - (3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:
    - (i) specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis, or
    - (ii) meet the requirements of paragraph (a)(5) and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;
  - (4) For CO or PM-10,
    - (i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis or
    - (ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section; or
  - (5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(ii) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:
    - (i) Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the State makes a determination as provided in paragraph (A) or where the State makes a commitment as provided in paragraph (B):
      - (A) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP.
      - (B) The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:

- (1) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;
  - (2) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;
  - (3) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;
  - (4) A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and
  - (5) Written documentation including all air quality analyses supporting the conformity determination.
- (C) Where a Federal agency made a conformity determination based on a State commitment under subparagraph (a)(5)(i)(B) of this paragraph, such a State commitment is automatically deemed a call for a SIP revision by EPA under section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable SIP;
- (ii) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A;
- (iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;
- (iv) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years [described in paragraph (d) of section 51.859] do not increase emissions with respect to the baseline emissions;
  - (A) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:
    - (1) Calendar year 1990,
    - (2) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the most representative year), if a classification is promulgated in 40 CFR part 81, or
    - (3) The year of the baseline inventory in the PM-10 applicable SIP;
  - (B) The baseline emissions are the total of direct and indirect emissions calculated for the future years [described in paragraph (d) of section 51.859] using the historic activity levels [described in subparagraph (a)(5)(iv)(A) of this paragraph] and appropriate emission factors for the future years; or
- (v) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.
- (b) The areawide and/or local air quality modeling analyses must:
  - (1) Meet the requirements in section 51.859 and
  - (2) Show that the action does not:
    - (i) Cause or contribute to any new violation of any standard in any area; or
    - (ii) Increase the frequency or severity of any existing violation of any standard in any area.
- (c) Notwithstanding any other requirements of this section, an action subject to this subpart may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action

is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

- (d) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

**' 51.859 Procedures for conformity determinations of general Federal actions.**

- (a) The analyses required under this subpart must be based on the latest planning assumptions.
  - (1) All planning assumptions must be derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.
  - (2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.
- (b) The analyses required under this subpart must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.
  - (1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that State must be used for the conformity analysis as specified below:
    - (i) The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and
    - (ii) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.
  - (2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.
- (c) The air quality modeling analyses required under this Subpart must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R), unless:
  - (1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and
  - (2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.
- (d) The analyses required under this subpart, except section 51.858, paragraph (a)(1), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:
  - (1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;
  - (2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and
  - (3) Any year for which the applicable SIP specifies an emissions budget.

**' 51.860 Mitigation of air quality impacts.**

- (a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.
- (b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.
- (c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity



- determinations must comply with the obligations of such commitments.
- (d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.
  - (e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of section 51.856 and the public participation requirements of section 51.857.
  - (f) The implementation plan revision required in section 51.851 of this subpart shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.
  - (g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

PART 93 -- DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS  
**SUBPART B -- DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS**

Sec.

**93.150 Prohibition.**

**93.151 State implementation plan (SIP) revision.**

**93.152 Definitions.**

**93.153 Applicability.**

**93.154 Conformity analysis.**

**93.155 Reporting requirements.**

**93.156 Public participation.**

**93.157 Frequency of conformity determinations.**

**93.158 Criteria for determining conformity of general Federal actions.**

**93.159 Procedures for conformity determinations of general Federal actions.**

**93.160 Mitigation of air quality impacts.**

**SUBPART B -- DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS**

**' 93.150 Prohibition.**

- (a) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.
- (b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action is taken.
- (c) The preceding sentence does not include Federal actions where:
  - (1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to the effective date of this rule, or
  - (2)
    - (i) Prior to the effective date of this rule, an environmental analysis was commenced or a contract was awarded to develop the specific environmental analysis,
    - (ii) Sufficient environmental analysis is completed by March 15, 1994 so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under section 176(c) of the Clean Air Act (Act), and
    - (iii) A written determination of conformity under section 176(c) of the Act has been made by the Federal agency responsible for the Federal action by March 15, 1994, or
- (d) Notwithstanding any provision of this subpart, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the National Environmental Policy Act (NEPA), or the Clean Air Act (Act).

**' 93.151 State implementation plan (SIP) revision.**

The Federal conformity rules under this Subpart, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. A State's conformity provisions must contain criteria and procedures that are no less stringent than the requirements described in this subpart. A State may establish more stringent conformity criteria and procedures only if they apply equally to nonfederal as well as Federal entities. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable SIP, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the State revises its SIP to specifically remove them from the SIP and that

revision is approved by EPA.

### **'93.152 Definitions.**

Terms used but not defined in this part shall have the meaning given them by the Act and EPA's regulations, in that order of priority.

Affected Federal land manager means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under 42 U.S.C. 7472 of the Act that is located within 100 km of the proposed Federal action.

Applicable implementation plan or applicable SIP means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110 of the Act, or promulgated under section 110(c) of the Act (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the Act and which implements the relevant requirements of the Act.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

Cause or contribute to a new violation means a Federal action that:

- (1) Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken, or
- (2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the Federal action.

Criteria pollutant or standard means any pollutant for which there is established a NAAQS at 40 CFR part 50.

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

Emergency means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

Emissions budgets are those portions of the applicable SIP's projected emission inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

Emission offsets, for purposes of section 93.158, are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. When an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

EPA means the Environmental Protection Agency.

Federal action means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase of the non-Federal undertaking that requires the Federal permit, license, or approval.

Federal agency means, for purposes of this rule, a Federal department, agency, or instrumentality of the

Federal government.

Increase the frequency or severity of any existing violation of any standard in any area means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Indirect emissions means those emissions of a criteria pollutant or its precursors that:

- (1) Are caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable, and
- (2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

Maintenance area means an area with a maintenance plan approved under section 175A of the Act.

Maintenance plan means a revision to the applicable SIP, meeting the requirements of section 175A of the Act.

Metropolitan Planning Organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

Milestone has the meaning given in sections 182(g)(1) and 189(c)(1) of the Act.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM-10), and sulfur dioxide (SO<sub>2</sub>).

NEPA is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

Nonattainment area means an area designated as nonattainment under section 107 of the Act and described in 40 CFR part 81.

Precursors of a criteria pollutant are:

- (1) For ozone, nitrogen oxides (NO<sub>x</sub>), unless an area is exempted from NO<sub>x</sub> requirements under section 182(f) of the Act, and volatile organic compounds (VOC), and
- (2) For PM-10, those pollutants described in the PM-10 nonattainment area applicable SIP as significant contributors to the PM-10 levels.

Reasonably foreseeable emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Regionally significant action means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emission inventory for that pollutant.

Regional water and/or wastewater projects include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

Total of direct and indirect emissions means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under section 93.153, paragraph (c), (d), (e), or (f) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

### **'93.153 Applicability.**

- (a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in

this subpart.

- (b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.

- (1) For purposes of paragraph (b) of this section, the following rates apply in **nonattainment areas (NAA's)**:

	<u>Tons/Year</u>
<b>Ozone (VOC's or NOx)</b>	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Marginal and moderate NAA's inside an ozone transport region	
VOC	50
NOx	100
<b>Carbon monoxide</b>	
All NAA's	100
<b>SO<sub>2</sub> or NO<sub>2</sub></b>	
All NAA's	100
<b>PM-10</b>	
Moderate NAA's	100
Serious NAA's	70
<b>Pb</b>	
All NAA's	25

- (2) For purposes of paragraph (b) of this section, the following rates apply in **maintenance areas**:

	<u>Tons/Year</u>
<b>Ozone (NOx), SO<sub>2</sub> or NO<sub>2</sub></b>	
All Maintenance Areas	100
<b>Ozone (VOC's)</b>	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
<b>Carbon monoxide</b>	
All Maintenance Areas	100
<b>PM-10</b>	
All Maintenance Areas	100
<b>Pb</b>	
All Maintenance Areas	25

- (c) The requirements of this subpart shall not apply to the following Federal actions:

- (1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.
- (2) Actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:
  - (i) Judicial and legislative proceedings.
  - (ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.
  - (iii) Rulemaking and policy development and issuance.
  - (iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.
  - (v) Civil and criminal enforcement activities, such as investigations, audits, inspections,

- examinations, prosecutions, and the training of law enforcement personnel.
- (vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.
- (vii) The routine, recurring transportation of materiel and personnel.
- (viii) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.
- (ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.
- (x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.
- (xi) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.
- (xii) Planning, studies, and provision of technical assistance.
- (xiii) Routine operation of facilities, mobile assets and equipment.
- (xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.
- (xv) The designation of empowerment zones, enterprise communities, or viticultural areas.
- (xvi) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.
- (xvii) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank necessary to effect monetary or exchange rate policy.
- (xviii) Actions that implement a foreign affairs function of the United States.
- (xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of CERCLA, and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.
- (xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.
- (xxi) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.
- (3) Actions where the emissions are not reasonably foreseeable, such as the following:
  - (i) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.
  - (ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.
- (4) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.
- (d) Notwithstanding the other requirements of this subpart, a conformity determination is not required for the

following Federal actions (or portion thereof):

- (1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the Act) or the prevention of significant deterioration program (title I, part C of the Act).
  - (2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section;
  - (3) Research, investigations, studies, demonstrations, or training (other than those exempted under section 51.853(c)(2)), where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;
  - (4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).
  - (5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.
- (e) Federal actions which are part of a continuing response to an emergency or disaster under section 93.153(d)(2) and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under section 93.153(d)(2) are exempt from the requirements of this subpart only if:
- (1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or
  - (2) For actions which are to be taken after those actions covered by paragraph (e)(1) of this section, the Federal agency makes a new determination as provided in paragraph (e)(1) of this section.
- (f) Notwithstanding other requirements of this subpart, actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(1) or (g)(2) and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.
- (g) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(1) or (g)(2) of this section:
- (1) The Federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:
    - (i) Cause or contribute to any new violation of any standard in any area;
    - (ii) Interfere with provisions in the applicable SIP for maintenance of any standard;
    - (iii) Increase the frequency or severity of any existing violation of any standard in any area; or
    - (iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:
      - (A) A demonstration of reasonable further progress;
      - (B) A demonstration of attainment; or
      - (C) A maintenance plan; or
  - (2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.
- (h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:
- (1) The Federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the basis for the presumptions;

- (2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;
- (3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and
- (4) The Federal agency must publish the final list of such activities in the Federal Register.
- (i) Notwithstanding the other requirements of this subpart, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of section 93.150 and sections 93.155-860 shall apply for the Federal action.
- (j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be presumed to conform and the requirements of section 93.150 and sections 93.155-860 shall apply for the Federal action.
- (k) The provisions of this subpart shall apply in all nonattainment and maintenance areas.

**' 93.154 Conformity analysis.**

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

**' 93.155 Reporting requirements.**

- (a) A Federal agency making a conformity determination under section 93.158 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Act and the MPO a 30 day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.
- (b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under section 93.158.

**' 93.156 Public participation.**

- (a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under section 93.158 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.
- (b) A Federal agency must make public its draft conformity determination under section 93.158 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.
- (c) A Federal agency must document its response to all the comments received on its draft conformity determination under section 93.158 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.
- (d) A Federal agency must make public its final conformity determination under section 93.158 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.



**' 93.157 Frequency of conformity determinations.**

- (a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under section 93.155, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.
- (b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under section 93.155.
- (c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions, above the levels in section 93.153(b), a new conformity determination is required.

**' 93.158 Criteria for determining conformity of general Federal actions.**

- (a) An action required under section 93.153 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in section 93.153, paragraph (b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:
  - (1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;
  - (2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;
  - (3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:
    - (i) Specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis, or
    - (ii) Meet the requirements of paragraph (a)(5) and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;
  - (4) For CO or PM-10,
    - (i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis or
    - (ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section;
  - (5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(11) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:
    - (i) Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the State makes a determination as provided in paragraph (A) or where the State makes a commitment as provided in paragraph (B):
      - (A) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP.
      - (B) The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment

- (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:
- (1) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;
  - (2) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;
  - (3) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;
  - (4) A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and
  - (5) Written documentation including all air quality analyses supporting the conformity determination.
- (C) Where a Federal agency made a conformity determination based on a State commitment under subparagraph (a)(5)(i)(B) of this paragraph, such a State commitment is automatically deemed a call for a SIP revision by EPA under section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable SIP;
- (ii) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A;
  - (iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;
  - (iv) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years [described in paragraph (d) of section 93.159] do not increase emissions with respect to the baseline emissions;
    - (A) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:
      - (1) Calendar year 1990,
      - (2) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the most representative year), if a classification is promulgated in 40 CFR part 81, or
      - (3) The year of the baseline inventory in the PM-10 applicable SIP;
    - (B) The baseline emissions are the total of direct and indirect emissions calculated for the future years [described in paragraph (d) of section 93.159] using the historic activity levels [described in subparagraph (a)(5)(iv)(A) of this paragraph] and appropriate emission factors for the future years; or
  - (v) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.
- (b) The areawide and/or local air quality modeling analyses must:
- (1) Meet the requirements in section 93.159 and
  - (2) Show that the action does not:
    - (i) Cause or contribute to any new violation of any standard in any area; or

- (ii) Increase the frequency or severity of any existing violation of any standard in any area.
- (c) Notwithstanding any other requirements of this section, an action subject to this subpart may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.
- (d) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

**' 93.159 Procedures for conformity determinations of general Federal actions.**

- (a) The analyses required under this subpart must be based on the latest planning assumptions. (1) All planning assumptions must be derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.
  - (2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.
- (b) The analyses required under this subpart must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.
  - (1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that State must be used for the conformity analysis as specified below:
    - (i) The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and
    - (ii) A grace period of 3 months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.
  - (2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.
- (c) The air quality modeling analyses required under this subpart must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R), unless:
  - (1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and
  - (2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.
- (d) The analyses required under this subpart, except section 93.158, paragraph (a)(1), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:
  - (1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;
  - (2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and
  - (3) Any year for which the applicable SIP specifies an emissions budget.

**' 93.160 Mitigation of air quality impacts.**

- (a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.
- (b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.
- (c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.
- (d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.
- (e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of section 93.156 and the public participation requirements of section 93.157.
- (f) The implementation plan revision required in section 93.151 of this subpart shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.
- (g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

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## APPENDIX B2

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For the reasons set out in the preamble, title 40, chapter I, part 51 of the Code of Federal Regulations is amended as follows.

**PART 51--[AMENDED]**

1. The authority citation for part 51 continues to read as follows:  
**Authority:** 42 U.S.C. 7401 - 7671p
2. Part 51 is amended by adding a new subpart T to read as follows:

(starts on next page)



## Table of Contents Transportation Conformity Rule

' 51.390	Purpose.	
' 51.392	Definitions.	
' 51.394	Applicability.	
' 51.396	Implementation plan revision.	
' 51.398	Priority.	
' 51.400	Frequency of conformity determinations.	
' 51.402	Consultation.	
' 51.404	Content of transportation plans.	
' 51.406	Relationship of transportation plan and TIP conformity with the NEPA process.	
' 51.408	Fiscal constraints for transportation plans and TIPs.	
' 51.410	Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.	
' 51.412	Criteria and procedures: Latest planning assumptions.	
' 51.414	Criteria and procedures: Latest emissions model.	
' 51.416	Criteria and procedures: Consultation.	
' 51.418	Criteria and procedures: Timely implementation of TCMs.	
' 51.420	Criteria and procedures: Currently conforming transportation plan and TIP.	
' 51.422	Criteria and procedures: Projects from a plan and TIP.	
' 51.424	Criteria and procedures: Localized CO and PM <sub>10</sub> violations (hot spots).	
' 51.426	Criteria and procedures: Compliance with PM <sub>10</sub> control measures.	
' 51.428	Criteria and procedures: Motor vehicle emissions budget (transportation plan).	
' 51.430	Criteria and procedures: Motor vehicle emissions budget (TIP).	
' 51.432	Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).	
' 51.434	Criteria and procedures: Localized CO violations (hot spots) in the interim period.....	23

- ' 51.436 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).
- ' 51.438 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).
- ' 51.440 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP) .
- ' 51.442 Criteria and procedures: Interim period reductions for PM<sub>10</sub> and NO<sub>2</sub> areas (transportation plan).
- ' 51.444 Criteria and procedures: Interim period reductions for PM<sub>10</sub> and NO<sub>2</sub> areas (TIP).
- ' 51.446 Criteria and procedures: Interim period reductions for PM<sub>10</sub> and NO<sub>2</sub> areas (project not from a plan and TIP).
- ' 51.448 Transition from the interim period to the control strategy period.
- ' 51.450 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.
- ' 51.452 Procedures for determining regional transportation-related emissions.
- ' 51.454 Procedures for determining localized CO and PM<sub>10</sub> concentrations (hot-spot analysis).
- ' 51.456 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).
- ' 51.458 Enforceability of design concept and scope and project-level mitigation and control measures.
- ' 51.460 Exempt projects.
- ' 51.462 Projects exempt from regional emissions analyses.
- ' 51.464 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

**SUBPART T - CONFORMITY TO STATE OR FEDERAL IMPLEMENTATION PLANS OF  
TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED,  
FUNDED OR APPROVED UNDER TITLE 23 U.S.C. OR THE FEDERAL  
TRANSIT ACT**

**' 51.390 Purpose.**

The purpose of this subpart is to implement ' 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to ' 110 and Part D of the CAA.

**' 51.392 Definitions.**

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

Applicable implementation plan is defined in ' 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under ' 110, or promulgated under ' 110(c), or promulgated or approved pursuant to regulations promulgated under ' 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

**Cause or contribute to a new violation for a project means:**

- (1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or
- (2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

**Control strategy implementation plan revision** is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA ' ' 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and ' ' 192(a) and 192(b), for nitrogen dioxide).

**Control strategy period with respect to particulate matter less than 10 microns in diameter (PM<sub>10</sub>), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), and/or ozone precursors (volatile organic compounds and oxides of nitrogen),** means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM<sub>10</sub>, NO<sub>2</sub>, CO, and/or ozone, as appropriate. This period ends when a State submits and EPA approves a request under ' 107(d) of the CAA for redesignation to an attainment area.

**Design concept** means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

**Design scope** means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

**DOT** means the United States Department of Transportation.

**EPA** means the Environmental Protection Agency.

**FHWA** means the Federal Highway Administration of DOT.

**FHWA/FTA project, for the purpose of this subpart**, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

**FTA** means the Federal Transit Administration of DOT.

**Forecast period with respect to a transportation plan** is the period covered by the transportation plan pursuant to 23 CFR part 450.

**Highway project** is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

**Horizon year** is a year for which the transportation plan describes the envisioned transportation system according to ' 51.404 of this subpart.

**Hot-spot analysis** is an estimation of likely future localized CO and PM<sub>10</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

**Incomplete data area** means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

**Increase the frequency or severity** means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

**ISTEA** means the Intermodal Surface Transportation Efficiency Act of 1991.

**Maintenance area** means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under ' 175A of the CAA, as amended.

**Maintenance period with respect to a pollutant or pollutant precursor** means that period of time beginning when a State submits and EPA approves a request under ' 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

**Metropolitan planning organization (MPO)** is that organization designated as being responsible, together with the

State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

**Milestone** has the meaning given in ' 182(g)(1) and ' 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

**Motor vehicle emissions budget** is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or his or her designee, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO<sub>x</sub>) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO<sub>x</sub> budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO<sub>x</sub> budget if NO<sub>x</sub> reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

**National ambient air quality standards (NAAQS)** are those standards established pursuant to ' 109 of the CAA.

**NEPA** means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq).

**NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA**, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

**Nonattainment area** means any geographic region of the United States which has been designated as nonattainment under ' 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

**Not classified area** means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

**Phase II of the interim period with respect to a pollutant or pollutant precursor** means that period of time after the effective date of this rule, lasting until the earlier of the following:

- (1) submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or
- (2) the date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has notified the State, MPO, and DOT of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in ' 51.448 of this subpart.

**Project** means a highway project or transit project.

**Recipient of funds designated under title 23 U.S.C. or the Federal Transit Act** means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

**Regionally significant project** means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit

facilities that offer an alternative to regional highway travel.

**Rural transport ozone nonattainment area** means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under Clean Air Act ' 182(h) as a rural transport area.

**Standard** means a national ambient air quality standard.

**Submarginal area** means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

**Transit** is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

**Transit project** is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

**Transitional area** means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

**Transitional period with respect to a pollutant or pollutant precursor** means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in ' 51.448 of this subpart.

**Transportation control measure (TCM)** is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in ' 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

**Transportation improvement program (TIP)** means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

**Transportation plan** means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

**Transportation project** is a highway project or a transit project.

#### **' 51.394 Applicability.**

(a) Action applicability.

- (1) Except as provided for in paragraph (c) of this section or ' 51.460, conformity determinations are required for:
  - (i) The adoption, acceptance, approval or support of transportation plans developed pursuant

- to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;
  - (ii) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and
  - (iii) The approval, funding, or implementation of FHWA/FTA projects.
- (2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, ' 51.450 applies to such projects if they are regionally significant.
- (b) Geographic Applicability.
  - (1) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.
  - (2) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>).
  - (3) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:
    - (i) Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under ' 182(f) of the CAA that additional reductions of NO<sub>x</sub> would not contribute to attainment);
    - (ii) Nitrogen oxides in nitrogen dioxide areas; and
    - (iii) Volatile organic compounds, nitrogen oxides, and PM<sub>10</sub> in PM<sub>10</sub> areas if:
      - (A) During the interim period, the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT; or
      - (B) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.
- (c) Limitations.
  - (1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.
  - (2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the past three years.

**' 51.396 Implementation plan revision.**

- (a) States with areas subject to this rule must submit to the EPA and DOT a revision to their implementation plan which contains criteria and procedures for DOT, MPOs and other State or local agencies to assess the conformity of transportation plans, programs, and projects, consistent with these regulations. This revision is to be submitted by November 24, 1994 (or within 12 months of an area's redesignation from attainment to nonattainment, if the State has not previously submitted such a revision). EPA will provide DOT with a 30-day comment period before taking action to approve or disapprove the submission. A State's conformity provisions may contain criteria and procedures more stringent than the requirements described in these regulations only if the State's conformity provisions apply equally to non-federal as well as Federal entities.
- (b) The Federal conformity rules under this subpart and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of

Clean Air Act section 176(c) until such time as the required conformity implementation plan revision is approved by EPA. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable implementation plan, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the State revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

- (c) To be approvable by EPA, the implementation plan revision submitted to EPA and DOT under this section shall address all requirements of this subpart in a manner which gives them full legal effect. In particular, the revision shall incorporate the provisions of the following sections of this subpart in verbatim form, except insofar as needed to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in these sections: ' ' 51.392, 51.394, 51.398, 51.400, 51.404, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51.448, 51.450, 51.460, and 51.462.

#### **' 51.398 Priority.**

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

#### **' 51.400 Frequency of conformity determinations.**

- (a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.
- (b) Transportation plans.
- (1) Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.
  - (2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in ' 51.460. The conformity determination must be based on the transportation plan and the revision taken as a whole.
  - (3) Conformity of existing transportation plans must be redetermined within 18 months of the following, or the existing conformity determination will lapse:
    - (i) November 24, 1994;
    - (ii) EPA approval of an implementation plan revision which:
      - (A) Establishes or revises a transportation-related emissions budget (as required by CAA ' ' 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and ' ' 192(a) and 192(b), for nitrogen dioxide); or
      - (B) Adds, deletes, or changes TCMs; and
    - (iii) EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.
  - (4) In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.
- (c) Transportation improvement programs.
- (1) A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.
  - (2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in ' 51.460.



- (3) After an MPO adopts a new or revised transportation plan, conformity must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in ' 51.460. Otherwise, the existing conformity determination for the TIP will lapse.
- (4) In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.
- (d) Projects.  
FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

**' 51.402 Consultation.**

- (a) General.  
The implementation plan revision required under ' 51.396 shall include procedures for interagency consultation (Federal, State, and local) and resolution of conflicts.
  - (1) The implementation plan revision shall include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.
  - (2) Before the implementation plan revision is approved by EPA, MPOs and State departments of transportation before making conformity determinations must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section.
- (b) Interagency consultation procedures: General factors.
  - (1) States shall provide in the implementation plan well-defined consultation procedures whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.
  - (2) Interagency consultation procedures shall include at a minimum the general factors listed below and the specific processes in paragraph (c) of this section:
    - (i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;
    - (ii) The organizational level of regular consultation;
    - (iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;
    - (iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;
    - (v) A process for responding to the significant comments of involved agencies; and
    - (vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.
- (c) Interagency consultation procedures: Specific processes.  
Interagency consultation procedures shall also include the following specific processes:
  - (1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:
    - (i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;
    - (ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to

- those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;
- (iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see ' ' 51.460 and 51.462) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;
  - (iv) Making a determination, as required by ' 51.418(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;
  - (v) Identifying, as required by ' 51.454(d), projects located at sites in PM<sub>10</sub> nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM<sub>10</sub> hot-spot analysis; and
  - (vi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in ' 51.460.
- (2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:
    - (i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in ' 51.400; and
    - (ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.
  - (3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.
  - (4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed;
  - (5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of ' 51.452.
  - (6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys).
  - (7) A process (including Federal agencies) for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption.
- (d) Resolving conflicts.  
Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by ' 51.396 shall define the procedures for starting of the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the

final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) Public consultation procedures.

Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

**' 51.404 Content of transportation plans.**

(a) Transportation plans adopted after January 1, 1995 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas.

The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

- (i) Horizon years may be no more than 10 years apart.
- (ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.
- (iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.
- (iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

- (i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and ' 51.402;
- (ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and
- (iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) Moderate areas reclassified to serious.

Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) Transportation plans for other areas.

Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future

specifically enough to allow determination of conformity according to the criteria and procedures of ' ' 51.410 - 51.446.

(d) Savings.

The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

**' 51.406 Relationship of transportation plan and TIP conformity with the NEPA process.**

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in ' ' 51.410 - 51.446 for projects not from a TIP before NEPA process completion.

**' 51.408 Fiscal constraints for transportation plans and TIPs.**

Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

**' 51.410 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.**

- (a) In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in ' ' 51.412 - 51.446 as listed in Table 1 in paragraph (b) of this section, and must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.
- (b) The following table indicates the criteria and procedures in ' ' 51.412 - 51.446 which apply for each action in each time period.

[ All tables begin on the next page ]

Table 1. Conformity Criteria

ALL PERIODS	
Action	Criteria
Transportation Plan	' ' 51.412, 51.414, 51.416, 51.418(b)
TIP	' ' 51.412, 51.414, 51.416, 51.418(c)
Project (from a conforming plan and TIP)	' ' 51.412, 51.414, 51.416, 51.420, 51.422, 51.424, 51.426
Project (not from a conforming plan and TIP)	' ' 51.412, 51.414, 51.416, 51.418(d), 51.420, 51.424, 51.426

PHASE II OF THE INTERIM PERIOD	
Action	Criteria
Transportation Plan	' ' 51.436, 51.442
TIP	' ' 51.438, 51.444
Project (from a conforming plan and TIP)	' ' 51.434
Project (not from a conforming plan and TIP)	' ' 51.434, 51.440, 51.446

Table 1. Conformity Criteria (continued)

TRANSITIONAL PERIOD	
Action	Criteria
Transportation Plan	' ' 51.428, 51.436, 51.442
TIP	' ' 51.430, 51.438, 51.444
Project (from a conforming plan and TIP)	' ' 51.434
Project (not from a conforming plan and TIP)	' ' 51.432, 51.434, 51.440, 51.446

CONTROL STRATEGY AND MAINTENANCE PERIODS	
Action	Criteria
Transportation Plan	' ' 51.428
TIP	' ' 51.430
Project (from a conforming plan and TIP)	no additional criteria
Project (not from a conforming plan and TIP)	' ' 51.432

- 51.412 The conformity determination must be based on the latest planning assumptions.
- 51.414 The conformity determination must be based on the latest emission estimation model available.
- 51.416 The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by ' 51.396.
- 51.418 The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.
- 51.420 There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.
- 51.422 The project must come from a conforming transportation plan and program.
- 51.424 The FHWA/FTA project must not cause or contribute to any new localized CO or PM<sub>10</sub> violations or increase the frequency or severity of any existing CO or PM<sub>10</sub> violations in CO and PM<sub>10</sub> nonattainment and maintenance areas.
- 51.426 The FHWA/FTA project must comply with PM<sub>10</sub> control measures in the applicable implementation plan.
- 51.428 The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- 51.430 The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- 51.432 The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- 51.434 The FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).
- 51.436 The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.
- 51.438 The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- 51.440 The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- 51.442 The transportation plan must contribute to emission reductions or must not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas.
- 51.444 The TIP must contribute to emission reductions or must not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas.
- 51.446 The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas.

**' 51.412 Criteria and procedures: Latest planning assumptions.**

- (a) The conformity determination, with respect to all other applicable criteria in ' ' 51.414 - 51.446, must be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.
- (b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.
- (c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.
- (d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.
- (e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.
- (f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by ' 51.402.

**' 51.414 Criteria and procedures: Latest emissions model.**

- (a) The conformity determination must be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.
- (b) EPA will consult with DOT to establish a grace period following the specification of any new model.
  - (1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.
  - (2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the Federal Register.
- (c) Conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

**' 51.416 Criteria and procedures: Consultation.**

- (a) The MPO must make the conformity determination according to the consultation procedures in this rule and in the implementation plan revision required by ' 51.396, and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until the implementation plan revision required by ' 51.396 is approved by EPA, the conformity determination must be made according to the procedures in ' 51.402(a)(2) and ' 51.402(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

**' 51.418 Criteria and procedures: Timely implementation of TCMs.**

- (a) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.
- (b) For transportation plans, this criterion is satisfied if the following two conditions are met:
  - (1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.
  - (2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.
- (c) For TIPs, this criterion is satisfied if the following conditions are met:
  - (1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.
  - (2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are



- reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.
- (3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.
  - (d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

**' 51.420 Criteria and procedures: Currently conforming transportation plan and TIP.**

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of ' 51.400.

**' 51.422 Criteria and procedures: Projects from a plan and TIP.**

- (a) The project must come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section.
- (b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:
  - (1) For projects which are required to be identified in the transportation plan in order to satisfy ' 51.404, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or
  - (2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.
- (c) A project is considered to be from a conforming program if the following conditions are met:
  - (1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and
  - (2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by ' 51.458(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

**' 51.424 Criteria and procedures: Localized CO and PM<sub>10</sub> violations (hot spots).**

- (a) The FHWA/FTA project must not cause or contribute to any new localized CO or PM<sub>10</sub> violations or increase the frequency or severity of any existing CO or PM<sub>10</sub> violations in CO and PM<sub>10</sub> nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.
- (b) The demonstration must be performed according to the requirements of ' 51.402(c)(1)(i) and ' 51.454.
- (c) For projects which are not of the type identified by ' 51.454(a) or ' 51.454(d), this criterion may be satisfied

if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of ' 51.454(b).

**' 51.426 Criteria and procedures: Compliance with PM<sub>10</sub> control measures.**

The FHWA/FTA project must comply with PM<sub>10</sub> control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM<sub>10</sub> emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

**' 51.428 Criteria and procedures: Motor vehicle emissions budget (transportation plan).**

- (a) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in ' 51.464. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met:
- (b) A regional emissions analysis shall be performed as follows:
  - (1) The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:
    - (i) VOC as an ozone precursor;
    - (ii) NO<sub>x</sub> as an ozone precursor, unless the Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment;
    - (iii) CO;
    - (iv) PM<sub>10</sub> (and its precursors VOC and/or NO<sub>x</sub> if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM<sub>10</sub> nonattainment problem or establishes a budget for such emissions); or
    - (v) NO<sub>x</sub> (in NO<sub>2</sub> nonattainment or maintenance areas);
  - (2) The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;
  - (3) The emissions analysis methodology shall meet the requirements of ' 51.452;
  - (4) For areas with a transportation plan that meets the content requirements of ' 51.404(a), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and
  - (5) For areas with a transportation plan that does not meet the content requirements of ' 51.404(a), the emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis must also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.
- (c) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (b)(1) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:
  - (1) If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;
  - (2) For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;
  - (3) For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less

- than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and
- (4) For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

**' 51.430 Criteria and procedures: Motor vehicle emissions budget (TIP).**

- (a) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in ' 51.464. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met.
- (b) For areas with a conforming transportation plan that fully meets the content requirements of ' 51.404(a), this criterion may be satisfied without additional regional analysis if:
- (1) Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and
  - (2) The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:
    - (i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
    - (ii) All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
    - (iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.
  - (3) If the requirements in paragraphs (b)(1) and (b)(2) of this section are not met, then:
    - (i) The TIP may be modified to meet those requirements; or
    - (ii) The transportation plan must be revised so that the requirements in paragraphs (b)(1) and (b)(2) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (b)(1) and (b)(2) of this section.
- (c) For areas with a transportation plan that does not meet the content requirements of ' 51.404(a), a regional emissions analysis must meet all of the following requirements:
- (1) The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;
  - (2) The analysis methodology shall meet the requirements of ' 51.452(c); and
  - (3) The regional analysis shall satisfy the requirements of ' 51.428(b)(1), ' 51.428(b)(5), and ' 51.428(c).

**' 51.432 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).**

- (a) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in ' 51.464. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).
- (b) For areas with a conforming transportation plan that meets the content requirements of ' 51.404(a):

- (1) This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:
  - (i) Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
  - (ii) The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
  - (iii) The design concept and scope of the project is not significantly different from that described in the transportation plan.
- (2) If the requirements in paragraph (b)(1) of this section are not met, a regional emissions analysis must be performed as follows:
  - (i) The analysis methodology shall meet the requirements of ' 51.452;
  - (ii) The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis must include emissions from all previously approved projects which were not from a transportation plan and TIP; and
  - (iii) The emissions analysis shall meet the requirements of ' ' 51.428(b)(1), 51.428(b)(4), and 51.428(c).
- (c) For areas with a transportation plan that does not meet the content requirements of ' 51.404(a), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:
  - (1) The analysis methodology meets the requirements of ' 51.452(c);
  - (2) The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and
  - (3) The regional analysis satisfies the requirements of ' ' 51.428(b)(1), 51.428(b)(5), and 51.428(c).

**' 51.434 Criteria and procedures: Localized CO violations (hot spots) in the interim period.**

- (a) Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.
- (b) The demonstration must be performed according to the requirements of ' 51.402(c)(1)(i) and ' 51.454.
- (c) For projects which are not of the type identified by ' 51.454(a), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of ' 51.454(b).

**' 51.436 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).**

- (a) A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in ' 51.464. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.
- (b) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period

- shall also be an analysis year.
- (c) Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in ' 51.460 and ' 51.462 need not be explicitly considered):
- (1) All in-place regionally significant highway and transit facilities, services and activities;
  - (2) All ongoing travel demand management or transportation system management activities; and
  - (3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)
- (d) Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in ' 51.460 and ' 51.462 need not be explicitly considered):
- (1) All facilities, services, and activities in the 'Baseline' scenario;
  - (2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
  - (3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;
  - (4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;
  - (5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
  - (6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- (e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference in regional VOC and NO<sub>x</sub> emissions (unless the Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of ' 51.452. Emissions in milestone years which are between the analysis years may be determined by interpolation.
- (f) This criterion is met if the regional VOC and NO<sub>x</sub> emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

**' 51.438 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).**

- (a) A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in ' 51.464. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.
- (b) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
- (c) Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in ' 51.460 and ' 51.462 need not be explicitly considered):
  - (1) All in-place regionally significant highway and transit facilities, services and activities;
  - (2) All ongoing travel demand management or transportation system management activities; and
  - (3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)
- (d) Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in ' 51.460 and ' 51.462 need not be explicitly considered):
  - (1) All facilities, services, and activities in the 'Baseline' scenario;
  - (2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;
  - (3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;
  - (4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;
  - (5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
  - (6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- (e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios, and determine the difference in regional VOC and NO<sub>x</sub> emissions (unless the Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of ' 51.452. Emissions in milestone years which are between analysis years may be determined by interpolation.

- (f) This criterion is met if the regional VOC and NO<sub>x</sub> emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

**' 51.440 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).**

A Transportation TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in ' 51.464. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of ' 51.436 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

**' 51.442 Criteria and procedures: Interim period reductions for PM<sub>10</sub> and NO<sub>2</sub> areas (transportation plan).**

- (a) A transportation plan must contribute to emission reductions or must not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either paragraph (b) or (c) of this section are met.
- (b) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area (and of each transportation-related precursor of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT) and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area, by performing a regional emissions analysis as follows:
- (1) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO<sub>2</sub> areas) or four years and six months following the date of designation (for PM<sub>10</sub> areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
  - (2) Define for each of the analysis years the "Baseline" scenario, as defined in ' 51.436(c), and the "Action" scenario, as defined in ' 51.436(d).
  - (3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference between the two scenarios in regional PM<sub>10</sub> emissions in a PM<sub>10</sub> nonattainment area (and transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT) and in NO<sub>x</sub> emissions in an NO<sub>2</sub> nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of ' 51.452. The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.
  - (4) Demonstrate that the regional PM<sub>10</sub> emissions and PM<sub>10</sub> precursor emissions, where applicable, (for PM<sub>10</sub> nonattainment areas) and NO<sub>x</sub> emissions (for NO<sub>2</sub> nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.
- (c) Demonstrate that when the projects in the transportation plan and all other regionally significant projects

expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area (and transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT) and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

- (1) Determine the baseline regional emissions of PM<sub>10</sub> and PM<sub>10</sub> precursors, where applicable (for PM<sub>10</sub> nonattainment areas) and NO<sub>x</sub> (for NO<sub>2</sub> nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by ' 51.396 defines the baseline emissions for a PM<sub>10</sub> area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.
- (2) Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of ' 51.452. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO<sub>2</sub> areas) or four years and six months following the date of designation (for PM<sub>10</sub> areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
- (3) Demonstrate that for each analysis year the emissions estimated in paragraph (c)(2) of this section are no greater than baseline emissions of PM<sub>10</sub> and PM<sub>10</sub> precursors, where applicable (for PM<sub>10</sub> nonattainment areas) or NO<sub>x</sub> (for NO<sub>2</sub> nonattainment areas) from highway and transit sources.

**' 51.444 Criteria and procedures: Interim period reductions for PM<sub>10</sub> and NO<sub>2</sub> areas (TIP).**

- (a) A TIP must contribute to emission reductions or must not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (b) or paragraph (c) of this section are met.
- (b) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area (and transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT) and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area, by performing a regional emissions analysis as follows:
  - (1) Determine the analysis years for which emissions are to be estimated, according to the requirements of ' 51.442(b)(1).
  - (2) Define for each of the analysis years the "Baseline" scenario, as defined in ' 51.438(c), and the "Action" scenario, as defined in ' 51.438(d).
  - (3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios as required by ' 51.442(b)(3), and make the demonstration required by ' 51.442(b)(4).
- (c) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area (and transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT) and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by ' 51.442(c)(1)-(3).

**' 51.446 Criteria and procedures: Interim period reductions for PM<sub>10</sub> and NO<sub>2</sub> areas (project not from a plan and TIP).**



A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of ' 51.442 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and ' 51.442(b) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

**' 51.448 Transition from the interim period to the control strategy period.**

- (a) Areas which submit a control strategy implementation plan revision after November 24, 1993.
  - (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.
    - (i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (a)(1) of this section.
    - (ii) Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
  - (2) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.
  - (3) Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act ' 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- (b) Areas which have not submitted a control strategy implementation plan revision.
  - (1) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993 and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):
    - (i) No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and
    - (ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.
  - (2) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993 and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

- (i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and
  - (ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
- (c) Areas which have not submitted a complete control strategy implementation plan revision.
  - (1) For areas where EPA notifies the State, MPO, and DOT after November 24, 1993 that the control strategy implementation plan revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
    - (i) No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and
    - (ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.
    - (iii) Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act ' 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
  - (2) For areas where EPA has determined before November 24, 1993 that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
    - (i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and
    - (ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
    - (iii) Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act ' 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- (d) Areas which submitted a control strategy implementation plan before November 24, 1993.
  - (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.
    - (i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 24, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (d)(1) of this section.
    - (ii) Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
  - (2) If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.
  - (3) Notwithstanding paragraph (d)(2) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision

would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act ' 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993 unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

- (e) Projects.

If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (e)(1) and (2) of this section must be met.

  - (1) Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "Action" scenario (as required by ' 51.436 - 51.446) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.
  - (2) In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in ' 51.402(d), which applies for any State air agency comments on a conformity determination.
- (f) Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures.
  - (1) The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (a)(1) and (d)(1) of this section) does not require new emissions analysis and does not have to satisfy the requirements of ' 51.412 and 51.414 if:
    - (i) The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and
    - (ii) The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.
  - (2) A redetermination of conformity as described in paragraph (f)(1) of this section is not considered a conformity determination for the purposes of ' 51.400(b)(4) or ' 51.400(c)(4) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all the applicable criteria and procedures of ' 51.410 within three years of the last determination which did not rely on paragraph (f)(1) of this section.
- (g) Ozone nonattainment areas.
  - (1) The requirements of paragraph (b)(1) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act ' 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act ' 182(b)(1) requires to be submitted to EPA November 15, 1993.
  - (2) The requirements of paragraph (b)(1) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act ' 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (b)(1) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act ' 182(b)(1).
  - (3) The requirements of paragraph (a) of this section apply when the implementation plan revisions required by Clean Air Act ' 182(c)(2)(A) and 182(c)(2)(B) are submitted.
- (h) Nonattainment areas which are not required to demonstrate reasonable further progress and attainment. If an area listed in ' 51.464 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in ' 51.464 are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of paragraph (b)

of this section do not apply to these areas at any time.

- (i) Maintenance plans. If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act ' 175A is submitted to EPA, the requirements of paragraph (a) or (d) of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

**' 51.450 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.**

No recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of ' 51.420 and the requirements of one of the following paragraphs (a) through (e) are met:

- (a) The project comes from a conforming plan and program consistent with the requirements of ' 51.422;
- (b) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;
- (c) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of ' 51.432;
- (d) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of ' 51.440 (in ozone and CO nonattainment areas) or ' 51.446 (in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas); or
- (e) During the transitional period, the project satisfies the requirements of both paragraphs (c) and (d) of this section.

**' 51.452 Procedures for determining regional transportation-related emissions.**

- (a) General requirements.
  - (1) The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by ' 51.402. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.
  - (2) The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.
  - (3) Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not

- implement the program.
- (4) Notwithstanding paragraph (a)(3) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in ' ' 51.428 - 51.432, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of ' ' 51.428 - 51.432 are satisfied.
  - (5) A regional emissions analysis for the purpose of satisfying the requirements of ' ' 51.436 - 51.440 may account for the programs in paragraph (a)(4) of this section, but the same assumptions about these programs shall be used for both the "Baseline" and "Action" scenarios.
- (b) Serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995.
- Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (b)(1) through (5) of this section.
- (1) A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:
    - (i) The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;
    - (ii) The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;
    - (iii) For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;
    - (iv) Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;
    - (v) Free-flow speeds on network links shall be based on empirical observations;
    - (vi) Peak and off-peak travel demand and travel times must be provided;
    - (vii) Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;
    - (viii) The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;
    - (ix) A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;
    - (x) A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and
    - (xi) Consideration of emissions increases from construction-related congestion is not specifically required.
  - (2) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation

- to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.
- (3) Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.
  - (4) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.
  - (5) Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to ' 51.402 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.
- (c) Areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995.
- (1) Procedures which satisfy some or all of the requirements of paragraph (a) of this section shall be used in all areas not subject to paragraph (a) of this section in which those procedures have been the previous practice of the MPO.
  - (2) Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles traveled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.
- (d) Projects not from a conforming plan and TIP in isolated rural nonattainment and maintenance areas. This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).
- (1) Conformity demonstrations for projects in these areas may satisfy the requirements of ' ' 51.432, 51.440, and 51.446 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).
  - (2) The requirements of ' 51.432 shall be satisfied according to the procedures in ' 51.432(c), with references to the "transportation plan" taken to mean the statewide transportation plan.
  - (3) The requirements of ' ' 51.440 and 51.446 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).
  - (4) The requirement of ' 51.450(b) shall be satisfied if:
    - (i) The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of ' ' 51.432, 51.440, or 51.446 (as modified by paragraphs (d)(2) and (d)(3) of this section), as appropriate for the time period and pollutant; and
    - (ii) The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.
- (e)  $PM_{10}$  from construction-related fugitive dust.
- (1) For areas in which the implementation plan does not identify construction-related fugitive  $PM_{10}$  as a contributor to the nonattainment problem, the fugitive  $PM_{10}$  emissions associated with highway and

- transit project construction are not required to be considered in the regional emissions analysis.
- (2) In PM<sub>10</sub> nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the regional PM<sub>10</sub> emissions analysis shall consider construction-related fugitive PM<sub>10</sub> and shall account for the level of construction activity, the fugitive PM<sub>10</sub> control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

**' 51.454 Procedures for determining localized CO and PM<sub>10</sub> concentrations (hot-spot analysis).**

- (a) In the following cases, CO hot-spot analyses must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51 Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2-78-027R), unless, after the interagency consultation process described in ' 51.402 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:
- (1) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;
  - (2) For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;
  - (3) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;
  - (4) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and
  - (5) Where use of the "Guideline" models is practicable and reasonable given the potential for violations.
- (b) In cases other than those described in paragraph (a) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.
- (c) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.
- (d) PM<sub>10</sub> hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM-10 hot-spot analysis shall be determined through the interagency consultation process required in ' 51.402. In PM-10 nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this paragraph for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.
- (e) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.
- (f) PM<sub>10</sub> or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to the implementation of such measures, as required by ' 51.458(a).
- (g) CO and PM<sub>10</sub> hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

**' 51.456 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).**

- (a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:
  - (1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;
  - (2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or
  - (3) Emissions will be lower than needed to provide for continued maintenance.
- (b) If an applicable implementation plan submitted before November 24, 1993 demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.
- (c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.
- (d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.
- (e) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

**' 51.458 Enforceability of design concept and scope and project-level mitigation and control measures.**

- (a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM<sub>10</sub> or CO impacts. Before making conformity determinations written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by ' ' 51.428 - 51.432 and ' ' 51.436 - 51.440 or used in the project-level hot-spot analysis required by ' ' 51.424 and 51.434.
- (b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.
- (c) The implementation plan revision required in ' 51.396 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.
- (d) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of ' ' 51.424, 51.428, and 51.430 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under ' 51.402. The MPO and DOT must



confirm that the transportation plan and TIP still satisfy the requirements of ' ' 51.428 and 51.430 and that the project still satisfies the requirements of ' 51.424, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

**' 51.460 Exempt projects.**

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see ' 51.402(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

[ Table 2 begins on the next page ]

**Table 2. - Exempt Projects**

**SAFETY**

Railroad/highway crossing  
Hazard elimination program  
Safer non-Federal-aid system roads  
Shoulder improvements  
Increasing sight distance  
Safety improvement program  
Traffic control devices and operating assistance other than signalization projects  
Railroad/highway crossing warning devices  
Guardrails, median barriers, crash cushions  
Pavement resurfacing and/or rehabilitation  
Pavement marking demonstration  
Emergency relief (23 U.S.C. 125)  
Fencing  
Skid treatments  
Safety roadside rest areas  
Adding medians  
Truck climbing lanes outside the urbanized area  
Lighting improvements  
Widening narrow pavements or reconstructing bridges (no additional travel lanes)  
Emergency truck pullovers

**MASS TRANSIT**

Operating assistance to transit agencies  
Purchase of support vehicles  
Rehabilitation of transit vehicles<sup>1</sup>  
Purchase of office, shop, and operating equipment for existing facilities  
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)  
Construction or renovation of power, signal, and communications systems  
Construction of small passenger shelters and information kiosks  
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)  
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way  
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet<sup>1</sup>  
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771

## Table 2 (con't)

### AIR QUALITY

Continuation of ride-sharing and van-pooling promotion activities at current levels  
Bicycle and pedestrian facilities

### OTHER

Specific activities which do not involve or lead directly to construction, such as:

- Planning and technical studies
- Grants for training and research programs
- Planning activities conducted pursuant to titles 23 and 49 U.S.C
- Federal-aid systems revisions

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action  
Noise attenuation

Advance land acquisitions (23 CFR 712 or 23 CFR 771)

Acquisition of scenic easements

Plantings, landscaping, etc.

Sign removal

Directional and informational signs

Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)

Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes

<sup>1</sup> In PM<sub>10</sub> nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

### **' 51.462 Projects exempt from regional emissions analyses.**

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM<sub>10</sub> concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see ' 51.402(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3. - Projects Exempt From Regional Emissions Analyses

- Intersection channelization projects
- Intersection signalization projects at individual intersections
- Interchange reconfiguration projects
- Changes in vertical and horizontal alignment
- Truck size and weight inspection stations
- Bus terminals and transfer points

**' 51.464 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.**

- (a) Application.  
This section applies in the following areas:
  - (1) Rural transport ozone nonattainment areas;
  - (2) Marginal ozone areas;
  - (3) Submarginal ozone areas;
  - (4) Transitional ozone areas;
  - (5) Incomplete data ozone areas;
  - (6) Moderate CO areas with a design value of 12.7 ppm or less; and
  - (7) Not classified CO areas.
- (b) Default conformity procedures.  
The criteria and procedures in ' ' 51.436 - 51.440 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in ' ' 51.428 - 51.432, except as otherwise provided in paragraph (c) of this section.
- (c) Optional conformity procedures.  
The State or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in ' ' 51.428 - 51.432 apply in lieu of the procedures in ' ' 51.436 - 51.440.

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# EPA Summary of the Transportation Conformity Rule

Section 176 of the Clean Air Act as  
Amended in 1990

Requirements for Conformity

## **APPENDIX C**

**RESERVED**



## APPENDIX D

**MANUAL OF PROCEDURES**  
To Be Used in Conjunction with Placer County's Rule 506 -  
Biomass Emission Reduction Credit and Banking

1. INTRODUCTION AND CONTENTS

This Manual of Procedures sets forth procedures relating to the application, calculation, review, registration, tracking and use of emission reduction credits arising from the reduction in open burning of biomass material as provided in Rule 506 - Biomass Emission Reduction Credit and Banking. The Emission Reduction Credit (ERC) application, calculation, and banking system contains the following requirements and elements:

A. STANDARD APPLICATION FORM

The application must contain sufficient information on the legal trail from landowner to applicant (if applicant is not landowner) to input into the database and confirm legal authority for an ERC application. Also the database will have the: landowner's name, lessee/farmer, applicant, current ERC owner, and end user (offsets) if known.

B. SPECIFIC APPLICATION PROCEDURES

The parcel ID will be Assessors Parcel # from the county, farmers field ID, Section, Township, Range location, nearest crossroads, and include a map of the parcel. The application will also contain burn records or other verifiable documentation on parcel(s), and a calculation sheet with the emission reductions for each parcel.

C. STANDARD CALCULATION TEMPLATE WITH EXAMPLE

This manual provides a standardized calculation template and examples for various crops and scenarios.

D. SAMPLE ERC CERTIFICATE

The certificate lists specific parcel(s) location(s), pollutants, amount of credits per quarter, and ownership of ERCs.

E. SPECIFICS OF ENFORCEABILITY FOR BIOMASS ERC/OFFSETS

Ownership of ERCs will go into a ledger database which will also contain information regarding the landowner and farmer. The biomass ERC list will become a no burn list and no APCD burn permit will be issued for those parcels. The database will cross-check the no burn list with the ready to burn list for verification and will be used throughout the year.

F. METHODS OF ADDRESSING POSSIBLE DOUBLE COUNTING PROBLEMS

Existing biomass plants that require offsets will need to report open biomass burning reduction credits claimed pursuant to Health & Safety Code Section 41605.5. These credits will be incorporated into the banking system register within a two year period. This will strengthen the central ledger approach and will work as outlined in Section 1.E. above.

G. SPECIFIC PROCEDURES FOR USE AND CHANGE OF CREDITS

Changes can be made in ownership of credits or quantity of credits. Amendment forms are provided to facilitate the quick re-issuance of certificates with changes. For temporary use of credits as offsets the database will specify the duration of transfer and the current ownership.

H. IDENTIFY VALID SURROGATE RECORDS

Burn records would be the most valid records, however, fire district records, written certification of the ASCS office or certification from the Placer County Agricultural Commissioner Department and Placer County Air Pollution Control District (APCD) may also be used.

I. DESCRIBE THE TRACKING SYSTEM

A comprehensive ERC banking database will be developed which has matching fields with the ready to burn database for cross-checking. A no burn list will be generated from the ERC banking database for biomass credits. The no burn list will be provided to the Dry Creek Fire Protection District and the California Department of Forestry and Fire Protection (CDF) so that they can keep from issuing fire agency burn permits for parcels with ERCs. This would not preclude a grower from obtaining a burn permit for other parcels without ERC's.

J. AN OUTLINE OF THE ISSUANCE OF AGRICULTURAL BURN PERMITS AND BURN DECISIONS

Growers come into the APCD for an annual APCD burning permit. Growers bring maps of the fields that they want to burn or for pesticide applications. After growers harvest fields or prune orchards and there is a residue to be burned they notify the APCD to get that specific parcel on the ready to burn list. When there is a burn day with sufficient acreage to allocate and the grower is available on the ready to burn list, the grower is authorized to burn that specific parcel on that day.

K. STANDARD INTER-DISTRICT AGREEMENT ON USE OF ERCS

Districts within the Sacramento Valley Air Basin agree to accept the ERC certificates issued by other districts within the Basin for use by sources required to obtain emission offsets pursuant to Rule 502, NEW SOURCE REVIEW. The district with the new or modified facility requiring offsets need only adjust those emission reductions based on specified distance ratios from the new facility.

L. MANUAL OF PROCEDURE FORMS

This Manual contains the forms that are necessary for the ERC application process including a transfer of ownership form, designation of authority form from the landowner, ERC certificate amendment form, and a release form for the designated owner of an ERC to donate the credits to the APCD.

## 2. ERC APPLICATION PROCEDURES

### A. APPLICATION FORMS

Applications for ERCs for open biomass burning shall be submitted on the following forms:

- Application cover page
- Parcel identification page
- Designation of authority page

Other information must also be submitted with the application package, such as a map(s) of the parcel(s) and the data sheet(s) used to calculate the ERCs.

APPLICATION FOR:  
OPEN BIOMASS BURNING EMISSION REDUCTION CREDIT CERTIFICATE

Please provide the appropriate information below, it must include authorization to apply from the landowner if the landowner is not the applicant. Please indicate if any section is not applicable (N/A).

This application covers \_\_\_\_\_ parcel(s). Attach additional sheets for each additional parcel if information is not consistent with that presented below. Attach a map of each parcel covered by this application. Please print or type the requested information.

APPLICANT

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(phone number)

LANDOWNER

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(phone number)

AUTHORIZED

\_\_\_\_\_  
(name)

DESIGNEE

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(phone number)

ERCs are requested to be issued in the following name(s):

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(phone number)

APPLICANT

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

**The applicant acknowledges that, upon issuance of an ERC, no APCD burn permit will be issued for the parcel(s) covered by the ERC certificate(s).**

### PARCEL IDENTIFICATION

Data relating to the quantity of emission reduction credits requested must be included on the attached ERC calculation worksheet(s) for each parcel.

Parcel ID: \_\_\_\_\_  
Acres: \_\_\_\_\_

Field ID & AP# \_\_\_\_\_  
Sec Twn Rge \_\_\_\_\_  
Crossroads \_\_\_\_\_  
Lessee/Grower \_\_\_\_\_

Biomass type \_\_\_\_\_  
Disposition \_\_\_\_\_  
of biomass \_\_\_\_\_

Parcel ID: \_\_\_\_\_  
Acres: \_\_\_\_\_

Field ID & AP# \_\_\_\_\_  
Sec Twn Rge \_\_\_\_\_  
Crossroads \_\_\_\_\_  
Lessee/Grower \_\_\_\_\_

Biomass type \_\_\_\_\_  
Disposition \_\_\_\_\_  
of biomass \_\_\_\_\_

Parcel ID: \_\_\_\_\_  
Acres: \_\_\_\_\_

Field ID & AP# \_\_\_\_\_  
Sec Twn Rge \_\_\_\_\_  
Crossroads \_\_\_\_\_  
Lessee/Grower \_\_\_\_\_

Biomass type \_\_\_\_\_  
Disposition \_\_\_\_\_  
of biomass \_\_\_\_\_

Parcel ID: \_\_\_\_\_  
Acres: \_\_\_\_\_

Field ID & AP# \_\_\_\_\_  
Sec Twn Rge \_\_\_\_\_  
Crossroads \_\_\_\_\_  
Lessee/Grower \_\_\_\_\_

Biomass type \_\_\_\_\_  
Disposition \_\_\_\_\_  
of biomass \_\_\_\_\_

Parcel ID: \_\_\_\_\_  
Acres: \_\_\_\_\_

Field ID & AP# \_\_\_\_\_  
Sec Twn Rge \_\_\_\_\_  
Crossroads \_\_\_\_\_  
Lessee/Grower \_\_\_\_\_

Biomass type \_\_\_\_\_  
Disposition \_\_\_\_\_  
of biomass \_\_\_\_\_

DESIGNATION OF AUTHORITY  
TO APPLY FOR, TRANSFER, MODIFY, OR TERMINATE AN ERC

I \_\_\_\_\_ certify that I, or \_\_\_\_\_ for which I am authorized to act, am the owner of the parcel of land identified below. I hereby appoint \_\_\_\_\_ as my (our) agent solely for purposes of applying for, transferring, or modifying an emission reduction credit (ERC) pursuant to Rule 506 - Emission Reduction Credit and Banking of the Placer County Air Pollution Control District on my behalf for the following identified parcel. This authorization supersedes any prior such authorization for the parcel.

Parcel Identification:

Tax Assessor Number \_\_\_\_\_

Field ID \_\_\_\_\_

Sec. Twn. Rge. \_\_\_\_\_

Nearest Crossroads \_\_\_\_\_

Map (indicate location on map with nearest road and crossroad)

Name (print): \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date: \_\_\_\_\_

**The applicant acknowledges that, upon issuance of an ERC, no APCD burn permit will be issued for the parcel(s) covered by the ERC certificate(s).**

### 3. OPEN BURNING ERC CALCULATION PROCEDURES

Default HBFs and QBFs shall be used to calculate the ERCs. An alternative use of the parcel specific HBFs and QBFs may be used after a methodology is developed and receives written California Air Resources Board (ARB) concurrence. The alternative method is to address specific geographic areas with specific air quality problems. In the event that a specific crop factor (i.e. FL or EF) is not found in Table 3 then factors from other sources (e.g. Darley, Jenkins, or AP42) may be used.

#### A. EMISSION REDUCTION CREDITS CALCULATION FORMULA

The APCD will calculate, for each parcel, the ERC amount based on the following calculation equation:

$$\text{ERCs} = (\text{AB}-\text{DA}) * \text{HBF} * \text{FL} * \text{EF} * \text{QBF}$$

These ERCs will be specific for each pollutant and stated in pounds per quarter.

#### B. FORMULA DEFINITIONS

Open biomass burning ERCs shall be calculated separately for each crop type, for each pollutant and for each quarter according to the above formula:

Where:

ERC = Emission reduction credit for each pollutant in pounds per quarter.

AB = Acreage burned is specific to a parcel, for which open burning is to be restricted upon issuance of the ERC.

FL = Fuel loading factor in dry tons per acre. The fuel loading factor shall be determined for each crop type from the fuel loading factors in Table 3.

EF = Emission factor in pounds per dry ton. The emission factor for each crop type and each pollutant shall be determined from the open field biomass burning emission factors listed in Table 3.

HBF = Historical burn fraction or the fraction of actual harvested acreage for each crop type which was historically open burned. The historical burn fraction shall be determined on a county-by-county basis from the default HBFs listed in Table 1.

QBF = Quarterly burn fraction is the fraction of the total historically burned acreage which was burned during each calendar quarter. The quarterly burn fraction shall be determined on a county-by-county basis for each calendar quarter from the default QBFs listed in Table 2.

DA = Discount acreage is the specified acres the applicant wishes to allow for continued burning on a portion of the parcel which is the subject of an ERC application. The portion of the parcel that is covered by the discount acreage (i.e. the acreage eligible for an APCD burn permit) must be clearly identified. This portion will not be allowed to change without prior APCD notification and approval.



C. METHODS OF CALCULATION

The method used for calculating emission reductions which can qualify for open biomass burning ERCs uses several factors. The ERC calculation worksheet in Table 4 below provides an example of the calculation method. The method allows the applicant to use preset factors required for the ERC calculation for the historical burn fraction, quarterly burn fraction, fuel loading factor, and the emission factors for each pollutant.

D. BURN INFORMATION SOURCES AND AVAILABILITY

The following sources or combination of information of sources may be used to verify the burn history of a specific crop on a specific parcel of land.

The APCD receives applications to burn, issues APCD burn permits allocates acres for burning and maintains lists of growers requesting authorization to burn. Fire Districts also receives and issues fire agency burn permits for agricultural burning. These records are preferred hard data used to determine the historical information that specific crop residues were burned on specific parcels of land during specific calendar quarters of the year. The ERC applicant should identify the records available, attach copies, and identify the public agency source(s) with contacts and phone numbers for verification as needed.

Where the public agency burn records are missing or inadequate, a certification by the respective public agency representative, based on his or her first hand knowledge that the identified crop residue burning occurred during specific quarters of specific years, may be accepted by the Air Pollution Control Officer, at her or his discretion, to meet the ERC application requirements.

E. APPLICATION COMPLETENESS

To be considered a complete application for ERCs, specific parcel information to verify burning during at least one year of the baseline years (1988-92), acreage burned, and crop type as a minimum must be included. An application for an ERC for open biomass burning will not be deemed incomplete due to burn history data not provided for each of the five baseline years of 1988 to 1992. However, the application must provide whatever data are reasonably available from the sources described Section 3.D. above.

F. HISTORICAL BURN FRACTIONS (HBF):

The default HBFs listed in Table 1 shall be used for the crops indicated.

G. QUARTERLY BURN FRACTION (QBF):

The default QBFs listed in Table 2 shall be used for the crops indicated.

H. FUEL LOADING (FL) AND EMISSION FACTORS (EF):

The biomass fuel loading (FL) and emission factors (EF) listed in Table 3 shall be used for the crops indicated.

I. CALCULATION FORM

The Sacramento Valley Air Basin Biomass ERC Calculation Worksheet form shall be completed for each parcel for which an ERC application is made.

4. PROCEDURES FOR USE AND MODIFICATION OF OPEN BIOMASS BURNING ERCS

- A. Procedures for the application and registration of ERCs are set forth in Rule 506 - Biomass Emission Reduction Credit and Banking ERCs may be used as air emission offsets. Such offsets may be required under the Rule 502, NEW SOURCE REVIEW of the APCD or by other regulatory or land use authorities. ERCs may be used as offsets for emissions on the same parcel on which open biomass burning reductions have occurred or to offset emissions of sources of air emissions off the parcel site but generally within the same air basin (the Sacramento Valley Air Basin). In order to be used off site by another party the ERC must be transferred to such party by the registered owner of the ERC. Alternatively, the ERC may be applied for in the first instance by the party intending to use the ERC if the landowner, or the landowner's authorized agent, authorizes the user to make such an application on behalf of the landowner or the landowner's authorized agent.
- B. ERC's may be transferred by the registered owner upon application and payment of a transfer fee as required by the APCD. Applications for transfers shall be made by submission of an Application to Transfer ERC form as follows:

APPLICATION TO TRANSFER ERC

I, \_\_\_\_\_ hereby transfer to \_\_\_\_\_ the Emissions Reduction Certificate number \_\_\_\_\_. I understand that the new registered owner of the ERC is entitled to all rights and privileges and will be subject to all the requirements and limitations related thereto.

This transfer is (please initial one of the two following choices):

- 1. Permanent \_\_\_\_\_
- 2. Will expire on \_\_\_\_\_

Previous registered owner: \_\_\_\_\_ Date: \_\_\_\_\_

New registered owner: \_\_\_\_\_ Date: \_\_\_\_\_

Address and telephone: \_\_\_\_\_

- C. ERC's may be canceled upon surrender of the ERC certificate by the registered owner. Applications for cancellation shall be made by submission of an Application to Cancel ERC form as follows:

## APPLICATION TO CANCEL ERC

I, \_\_\_\_\_ hereby surrender for cancellation the Emissions Reduction Certificate number \_\_\_\_\_ (attached). I understand that in the event this ERC has been previously used to offset air emissions of another source that cancellation of this ERC certificate may require such emitting source to curtail or cease operations or obtain a substitute offset.

Furthermore, if the ERCs pertain to open biomass burning I understand that burning may only be undertaken on the parcel subject to this ERC if permitted under applicable agricultural burning provisions set forth in the Health & Safety Code, in APCD regulations and in the current Sacramento Valley Annual Agricultural Burning Plan.

Registered Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Address and telephone: \_\_\_\_\_

- D. Rule 506 - Biomass Emission Reduction Credit and Banking provides that the District may claim emission reductions neither banked nor used as emission reduction credits from any source, after expiration of the application period stated in the rule, and use such emission reductions toward attainment of air quality standards or deposit the emission reductions into the community bank. Before making such a claim for emission reductions the APCD shall provide notice to the landowner or source that the APCD intends to claim the emissions reduction unless the landowner or source, or their authorized designee, makes an application for an ERC within 90 days of the notice. Ninety days following such notice, the District may claim the emission reductions.

### 5. APPLICATION REVIEW PROCEDURES

- A. The time periods stated in the rule for determining application completeness, doing calculations, processing the application, and making a final decision are the maximum timeframe allowed. Every effort will be made to complete the analysis and make a decision as quickly as possible consistent with APCD workload. Time periods in this section may be extended by mutual agreement of both the applicant and APCO. The District shall determine whether an ERC application is complete not later than thirty (30) calendar days following receipt of the application. If the application is not deemed incomplete within the specified time period, the APCD shall deem it complete.

If the APCD determines that the application is not complete, the applicant shall be

notified in writing of the decision, specifying in writing the additional information is required. The applicant shall have sixty (60) days to submit the requested information. Upon receipt of the information, the APCO shall have another fifteen (15) days to determine completeness. If no information is submitted and/or the application is still incomplete, the APCO may cancel the application with written notification to applicant.

Upon determination that the application is complete, the APCO shall notify the applicant in writing. Thereafter, only information to clarify, correct, or otherwise supplement the information submitted in the application may be requested by the District. No such notification need be made if the District determines that the ERC will be issued within fifteen (15) calendar days of receipt of the original or a revised application.

Withdrawal of a ERC application by an applicant shall result in cancellation of the application; any re-submittal will be processed as a new application.

For open biomass burning applications, not requiring a public comment period, final action will be taken within 30 days of the APCD receiving a complete application. For open biomass burning applications, requiring a public comment period, final action will be taken within 60 days of the APCD receiving a complete application.

For applications for open biomass burning ERCs for parcels of 500 acres or larger the APCO shall provide written notice to the applicant upon completion and transmittal to the applicant of the initial assessment. The District shall also provide written notice to the ARB and shall publish the notice in a local newspaper of general circulation. The notice shall specify the applicant, the quantity of emission reduction credits requested and a copy of the initial assessment.

The notice requirements related to issuance of ERCs may be waived by the APCD if the emission reduction credits applied for are less than 10,000 pounds per quarter per pollutant (or less than 20,000 pounds per quarter of CO), and for open field biomass burning credits or modifications thereof for a parcel less than 500 acres.

Publication of the notice shall commence a thirty (30) day public comment period during which the APCD shall accept written comments on the merits of the ERC application. Upon conclusion of this thirty (30) day period, the APCD shall have another thirty (30) days to render a decision to approve, conditionally approve, or deny the application. This decision shall be provided in writing to the applicant.

The applicant may appeal the APCD's decision following provisions specified in the APCD regulations.

## 6. ENFORCEMENT

### A. OPEN BIOMASS BURNING ERCS AND THE AGRICULTURAL BURNING PROGRAM

A parcel for which an ERC has been issued is not eligible for issuance of an APCD burn permit. Prior to issuance of an ERC, the APCD shall determine whether an APCD burn permit has been issued for the parcel. If such a permit has been issued, the application for the ERC shall be denied unless the applicant surrenders the APCD burn permit for cancellation or modification within fifteen (15) days of notice by the APCD

of its intention to deny the ERC application. Prior to issuance of an APCD burn permit, the APCD shall determine whether the parcel has already been issued an ERC. If an ERC has been issued, the application for an APCD burn permit shall be denied.

B. THE BIOMASS ERC BANKING RULE AND THE RICE STRAW BURNING PHASEDOWN LAW

The Biomass ERC banking rule and the rice burning phasedown law are separate programs and have separate requirements even though there is some connection and overlap. Section 41865 (p)(1) of the Health & Safety Code provides that emission reductions achieved in compliance with the required phasedown shall not affect emission reduction credits which would otherwise accrue from reductions in rice straw burning.

Growers are responsible for meeting the requirements related to both the phasedown and requirements that are associated with the registration and use, transfer or modification of ERCs. An individual parcel may be barred from burning both because of the phasedown and because an ERC has been issued for the parcel.

C. A COMPUTERIZED TRACKING SYSTEM WILL BE DEVELOPED FOR RULE 506 - BIOMASS EMISSION REDUCTION CREDIT AND BANKING

All ERCs which are granted will be entered into a computer database to keep track of pertinent information. Health & Safety Code Sections 41605.5 and 42314.5 provide that emission reduction credits shall be allowed to sources which utilize biomass waste material that would otherwise be open burned as a fuel for electrical generation or digester facilities. Rule 506 - Biomass Emission Reduction Credit and Banking contains procedures for the recording of credits allowed for by such facilities and ERCs in a single emission banking register. Information regarding the claiming of credits by electrical generation or digester facilities is required to be maintained in the central register. Prior to issuance of an ERC the APCD will cross-check its emission banking register to assure that credit is not being given both for an ERC and under Sections 41605.5 and 42314.5.

7. INTERDISTRICT AGREEMENTS REGARDING ERCS

APCDs/AQMDs within the Sacramento Valley Air Basin agree to accept the ERC certificates issued by other districts within the Basin for use by sources required to obtain emission offsets pursuant to Rule 502, NEW SOURCE REVIEW.

8. A sample of an open biomass burning ERC certificate follows:

PLACER COUNTY AIR POLLUTION CONTROL DISTRICT  
11464 "B" Avenue, Auburn, CA 95603  
(916) 889-7130

EMISSION REDUCTION CREDIT AND BANKING CERTIFICATE

Certificate Number: \_\_\_\_\_

Registered Owner: \_\_\_\_\_

Name

\_\_\_\_\_  
Address

Parcel Identification Number: \_\_\_\_\_

Parcel Location:

Assessor's Parcel Number: \_\_\_\_\_

Field ID: \_\_\_\_\_

Sec. Twn. Rge.: \_\_\_\_\_

Crossroads:

\_\_\_\_\_

District seal:



ERC Pollutant Amounts

(Pounds/Quarter)

1

Quarter

234

NO<sub>x</sub> as NO<sub>2</sub>

X

X

X

X

VOC

X

X

X

X

PM<sub>10</sub>

X

X

X

X

SO<sub>x</sub> as SO<sub>2</sub>

X

X

X

X

CO

X

X

X

X

Date Issued: \_\_\_\_\_

\_\_\_\_\_  
District representative (Title)

**This ERC certificate shall terminate on transfer of ownership of the parcel unless the landowner complies with Rule 506 - Biomass Emission Reduction Credit and Banking provisions concerning transfers.**

**TABLE 3**  
**OPEN BIOMASS BURNING FUEL LOADING AND EMISSION FACTORS**

(lb/ton)						(ton/acre)
<b>CROP</b>	<b>NO<sub>2</sub></b>	<b>SO<sub>2</sub></b>	<b>CO</b>	<b>ROG</b>	<b>PM<sub>10</sub></b>	<b>FUEL LOADING</b>
<b>Rice</b>	6.72	1.85	83	8	9	3.0
<b>Wheat</b>	4.48	7.10	108	9	13	1.9
<b>Safflower</b>	5.50	3.21	144	20	18	1.3
<b>Sorghum</b>	5.66	1.08	77	9	18	2.9
<b>Barley</b>	5.55	5.07	157	7	22	1.7
<b>Corn</b>	4.86	0.49	108	12	14	4.2
<b>Alfalfa</b>	5.50	3.21	119	29	29	0.8
<b>Oats</b>	5.50	3.21	136	14	21	1.6
<b>Grape</b>	5.83	1.42	39	3	3	2.5
<b>Orchard</b>	4.92	0.69	37	2	3	2.5
<b>Almond</b>	4.05	0.32	46	6	6	1.6
<b>Apple</b>	4.92	0.69	42	3	4	2.3
<b>Apricot</b>	4.92	0.69	49	6	6	1.8
<b>Cherry</b>	4.92	0.69	44	8	8	1.0
<b>Olive</b>	4.92	0.69	114	14	12	1.2
<b>Peach</b>	5.48	0.12	42	4	6	2.5
<b>Pear</b>	4.92	0.69	57	7	9	2.6
<b>Prune</b>	4.92	0.69	47	6	3	1.2
<b>Walnut</b>	4.92	0.69	47	6	6	1.2
<b>Wildland</b>	4.00		140	25	17	70

Factors based on Darley and AP42.